

European Commission: Proposal for a Directive on Collective Rights Management

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On 11 July 2012 the European Commission published its Proposal for a Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market.

The Proposal includes a draft version of the Directive, the traditional Explanatory Memorandum and two Annexes on transparency-related information for Collective Management Organizations (CMOs) and explanatory documents to be provided by member states accompanying the implementation. The Commission also made available MEMO/12/545 with answers to frequently asked questions, as well as an Impact Assessment Analysis.

The EU CMO market is composed of 250 collecting societies managing around EUR 6 billion in every year, the majority of which is controlled by 70 authors' rights CMOs where 80% of income results from musical creations. Harmonization of collective rights management in the EU has been on the Commission's agenda from as far back as 1995, being subject to consideration in several communications, recommendations, studies and decisions ever since, both from the Commission and the EU Parliament. Although the existing *acquis* contains scattered provisions on the topic, this would be the first Directive providing a framework for the operation of CMOs.

Structurally, the draft Directive is organized into five titles, containing general provisions, rules on CMOs, multi-territorial licensing (MTL), enforcement measures, and reporting and final provisions. The draft Directive applies to management activities of all CMOs (irrespective of sector of activity) but, in what concerns MTL, its scope of application is much narrower, being limited to online licensing of musical works by author's rights' CMOs involving the territory of at least two member states.

The Proposal's complementary objectives are those of promoting transparency and better governance of CMOs, as well as facilitating MTL of authors' rights in musical works for online uses in the EU/EEA.

The first objective is tackled through the establishment of a governance and transparency framework, seeking better enforcement or codification of existing principles. As such, the proposal contains organisational and transparency

framework rules governing the relationship of CMOs with members, other CMOs and (commercial) users. The second objective is addressed via the creation of a mechanism termed a “European Licensing Passport” for MTL purposes. This is intended to foster voluntary repertoire aggregation for online uses of musical works at EU level and the licensing of rights through MTL infrastructures, leading to the implementation of efficient licensing practices.

Concerning enforcement measures, the Proposal contains a three-pronged approach to dispute resolution involving CMOs: (i) disputes with members or rightsholders are subject to an internal resolution mechanism; (ii) disputes with users are subject to either judicial control or an independent and impartial body; (iii) specific MTL disputes can be submitted to an independent and impartial body. In all cases decisions are subject to judicial control.

Under the ordinary legislative procedure, the Proposal was submitted to the European Parliament. The next step is for the European Parliament to deliver its position on first reading.

European Commission, Press Release, ‘Copyright: Commission proposes easier music licensing in the Single Market’, IP/12/772, Brussels, 11 July 2012

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/772&format=HTML&aged=0&language=en&guiLanguage=EN>

European Commission, ‘Proposed Directive on collective management of copyright and related rights and multi-territorial licensing - frequently asked questions’, MEMO/12/545, Brussels, 11.07.2012

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